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## CORRESPONDENCE MEMORANDUM

**DATE:** April 26, 2013  
**TO:** Group Insurance Board  
**FROM:** David H. Nispel, General Counsel  
**SUBJECT:** Closed Meetings Policy

**Staff recommends the Group Insurance Board (GIB) approve the attached Closed Meetings Policy.**

During the February 5, 2013, Board meeting, the Board discussed the possibility of developing a policy governing voting in and exiting from a closed session. Staff agreed to prepare a draft policy for consideration by the Board at the May 21, 2013, meeting.

Please find attached a draft "Closed Meetings Policy (Voting and Exiting)" for your review and discussion.

Staff will be at the Board meeting to answer any questions.

Attachment A: GIB Closed Meetings Policy (Voting and Exiting) Draft

Reviewed and approved by Robert J. Marchant, Deputy Secretary

Electronically Signed 5/2/13

Board	Mtg Date	Item #
GIB	5.21.13	7A



## Group Insurance Board

Adopted: May 21, 2013

### **CLOSED MEETINGS POLICY (VOTING AND EXITING)**

#### **VOTING IN AND EXITING FROM A CLOSED SESSION**

This policy provides a two part approach to determining when it is appropriate to vote on an agenda item while in closed session and the announcement that is made upon exiting the closed session.

First, if the Board convenes in closed session pursuant to Wis. Stat. § 19.85 (1) (a) or (e), to deliberate over a closed session agenda item indicated in the meeting notice, the Board members can as part of that deliberation process vote on that particular agenda item in closed session. The Board agenda will provide the public with a clear understanding of what will occur regarding that particular agenda item. For example, an agenda item would read: "Intent to Award Contract for the Administration of the Standard Plans." That item would be followed by an agenda item that reads: "Announcement of Action Taken on Business Deliberated During Closed Session."

After exiting the closed session, the Board Chair would announce in open session the specific decision made by the GIB, including any motions and roll call votes. In the example above, the Chair would indicate that the Board voted to award the contract for the Administration of the Standard Plans to [name of company].

Second, if the Board convenes in closed session pursuant to Wis. Stat. § 19.85 (1) (e) or (g) to receive information on an agenda item but without the intention of deliberating on that particular item, the Board members will not vote on that matter. The Board agenda will provide the public with a clear understanding of what will occur regarding that particular agenda item. For example, an agenda item would read: "The Board will Receive Information Regarding the Administration of the Standard Plans." That item would be followed by an agenda item that reads: "Announcement that Information was Received Regarding the Administration of the Standard Plans."

After exiting the closed session, the Board Chair would announce in open session that the Board received information on the matter but did not vote.

This policy does not prohibit the Board from voting on an agenda item in open session that is designated as an action item but does not require a closed session.

## **AUTHORITY FOR THIS CLOSED SESSION POLICY**

Wis. Stat. § 19.85 (1) (a) refers to deliberating concerning a case that was the subject of a trial or hearing before the governmental body. Wis. Stat. § 19.85 (1) (e), refers to deliberating over business indicated in the meeting notice. Deliberating encompasses board members discussing their respective positions on the particular question before the Board and indicating how they will vote. In *State ex rel. Cities Service Oil Co. v. Board of Appeals*, 21 Wis. 2d 516, 124 N.W.2d 809 (1963) the Wisconsin Supreme Court stated that “voting is an integral part of deliberating and merely formalizes the result reached in the deliberating process.” The Wisconsin Attorney General has advised that voting can occur in closed session if the vote is an integral part of the deliberations conducted in the closed session under Wis. Stat. § 19.85 (1).

By expressly providing that the Board will convene in closed session pursuant to Wis. Stat. § 19.85 (1) (a) or (e) and indicating that the Board will deliberate on the designated agenda item, this policy is consistent with the position of the Wisconsin Supreme Court. Furthermore, this policy is adopted with the understanding that the Wisconsin Court of Appeals, in *State ex rel. Schaeve v. Van Lare*, 125 Wis. 2d 40, 370 N.W.2d 271 (Ct. App. 1985) has stated that “[n]one of the exemptions listed in sec. 19.85 expressly permits the Board to vote on any matter in closed session.”

Wis. Stat. § 19.85 (1) (e) and (g) allow for conducting specified public business and conferring with legal counsel, respectively. Such activity does not necessarily envision deliberating and voting on a particular agenda item. If the particular item is properly identified in the agenda, the authority for convening in closed session is provided by the foregoing statute sections.

## **REFERENCE MATERIAL**

**Wis. Stat. § 19.85 Exemptions. (1)** Any meeting of a governmental body, upon motion duly made and carried, may be convened in closed session under one or more of the exemptions provided in this section. The motion shall be carried by a majority vote in such manner that the vote of each member is ascertained and recorded in the minutes. No motion to convene in closed session may be adopted unless the chief presiding officer announces to those present at the meeting at which such motion is made, the nature of the business to be considered at such closed session, and the specific exemption or exemptions under this subsection by which such closed session is claimed to be authorized. Such announcement shall become part of the record of the meeting. No business may be taken up at any closed session except that which relates to matters contained in the chief presiding officer’s announcement of the closed session. A closed session may be held for any of the following purposes:

(a) Deliberating concerning a case which was the subject of any judicial or quasi-judicial trial or hearing before that governmental body.

(b) Considering dismissal, demotion, licensing or discipline of any public employee or person licensed by a Board or commission or the investigation of charges against such person, or considering the grant or denial of tenure for a university faculty member, and the taking of formal action on any such matter; provided that the faculty member or other public employee or person licensed is given actual notice of any evidentiary hearing which may be held prior to final action being taken and of any meeting at which final action may be taken. The notice shall contain a statement that the person has the right to demand that the evidentiary hearing or meeting be held in open session. This paragraph and par. (f) do not apply to any such evidentiary hearing or meeting where the employee or person licensed requests that an open session be held.

(c) Considering employment, promotion, compensation or performance evaluation data of any public employee over which the governmental body has jurisdiction or exercises responsibility.

(d) Except as provided in s. 304.06 (1) (eg) and by rule promulgated under s. 304.06 (1) (em), considering specific applications of probation, extended supervision or parole, or considering strategy for crime detection or prevention.

(e) Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session.

(ee) Deliberating by the council on unemployment insurance in a meeting at which all employer members of the council or all employee members of the council are excluded.

(eg) Deliberating by the council on worker's compensation in a meeting at which all employer members of the council or all employee members of the council are excluded.

(em) Deliberating under s. 157.70 if the location of a burial site, as defined in s. 157.70 (1) (b), is a subject of the deliberation and if discussing the location in public would be likely to result in disturbance of the burial site.

(f) Considering financial, medical, social or personal histories or disciplinary data of specific persons, preliminary consideration of specific personnel problems or the investigation of charges against specific persons except where par. (b) applies which, if discussed in public, would be likely to have a substantial adverse effect upon the reputation of any person referred to in such histories or data, or involved in such problems or investigations.

(g) Conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved.

(h) Consideration of requests for confidential written advice from the government accountability Board under s. 5.05 (6a), or from any county or municipal ethics Board under s. 19.59 (5).

(i) Considering any and all matters related to acts by businesses under s. 560.15 which, if discussed in public, could adversely affect the business, its employees or former employees.